

REMARKS

I. Initial Remarks

A. Status of the Claims

Claims 48-94 are pending and under consideration on the merits. Without prejudice or disclaimer, independent claim 48 has been amended to include the elements of previous claim 51. Claim 51 is therefore cancelled. Also without prejudice or disclaimer, claims 48, 59, 60, 65, 66, 72, 80, 83, and 91 have been amended to improve their clarity and/or maintain strict antecedent basis, and the text of pages 6 and 8 of the as-filed Specification have been amended to improve their clarity.

Finally, FIGs. 4, 5, and 6 have been replaced by the attached replacement drawings, which merely reproduce the original figures with computer generated reference characters.

Support for the above amendments may be found in the as-filed Specification, drawings, and claims. Applicant therefore submits that these amendments raise no issue of written description.

B. Interview Summary

Applicant thanks the Office for the courtesies extended to Applicant's representative, Nikolas Uhler, during a telephonic interview conducted on June 3, 2009. During the interview, Applicant's representative asked Examiner Wood to confirm that process claims 80-94 were only rejected under 35 U.S.C. § 112, second paragraph. In addition, Applicant's representative inquired as to whether, if the 35 U.S.C. § 112, second paragraph rejection of the process claims was overcome, such claims would be in condition for allowance.

In response, Examiner Wood confirmed that claims 80-94 have not been rejected in view of prior art, and that such claims would be in condition for allowance if the 35 U.S.C. § 112, second paragraph rejection was overcome. Applicant's representative agreed to take Examiner Wood's comments under advisement.

II. Response to Office Action

A. The objection to the drawings should be withdrawn

The Office objected to the as-filed drawings for the reasons set forth on pages 2 and 3 of the Office Action. Applicant understands that the Office's objection stems from the inclusion of hand-drawn reference characters on the original drawing sheets. While not specified in the rejection, Applicants understand the Examiner to be referring to only Figures 4, 5, and 6. The replacement drawing sheets submitted herewith address this issue by replacing the hand-drawn reference characters with computer generated characters.

In view of Applicant's replacement sheets of drawings, Applicant respectfully requests that the Office withdraw its objection to the drawings.

B. The objection to the specification and the 35 U.S.C. § 112, second paragraph rejection of claims 48-94 should be withdrawn.

The Office objects to the specification and rejects claims 48-94 for the reasons set forth at pages 2-3 of the Office Action. In particular, the Office states that "[t]he use of an apostrophe (') as an abbreviation for minutes does not appear to be appropriate." Office Action at 2 and 3.

In response, Applicant submits that one of ordinary skill in the art would understand the specification and claim language, as originally filed. Nonetheless, in an

effort to advance prosecution, Applicant has amended the specification and claims in the manner discussed above and requested by the Office. In view of these amendments, Applicant submits that the Office's objection to the specification and the 35 U.S.C. § 112, second paragraph rejection of claims 48-94 are moot, and should be withdrawn.

C. The 35 U.S.C. § 102(b) rejection of claims 48-58, 61-74, 78, and 79 as being anticipated by Guerdoux is improper.

The Office alleges that British Patent No. GB 2149411 A to Guerdoux ("Guerdoux") anticipates each and every element of claims 48-58, 61-74, 78, and 79 for the reasons set forth on pages 4 and 5 of the Office Action. Inasmuch as this rejection applies to claim 51 it is moot, as claim 51 is now cancelled. With respect to the pending claims, Applicant respectfully disagrees with and traverses this rejection, at least because Guerdoux does not teach, expressly or inherently, each and every element of independent claim 48, much less the elements of dependent claims 49, 50, 52-58, 61-74, 78, and 79. See M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)).

As amended, independent Claim 48 recites, *inter alia*, "[a] cable comprising at least one core . . . at least one coating layer made from a coating material, comprising: at least a first polyethylene having . . . a Melt Flow Index (MFI), measured at 190°C with a load of 2.16 Kg according to ASTM 01238-00 standard, of 0.1 g/10 min to 1g/10 min. . . and at least a second polyethylene" Contrary to the Office's position, Guerdoux does not teach or suggest a cable comprising at least one first polyethylene with the claimed MFI.

Guerdoux discloses polymer compositions useful for the insulation of metal conductors, such as telephone wires. See Guerdoux, page 1, lines 5-9. Specifically, Guerdoux discloses “a polymer composition of density comprised between 0.940 and 0.950 inclusively . . . comprising 50 to 60% by weight of at least one copolymer A of ethylene and α -olefins having 3 to 12 carbon atoms, the said copolymer having a density comprised between 0.932 and 0.940 and from 40 to 50% by weight of at least one ethylene polymer B having a density comprised between 0.952 and 0.960” *Id.* at lines 29-40.

However, Guerdoux does not disclose a cable comprising, *inter alia*, “at least one coating layer made from a coating material, comprising: at least a first polyethylene having . . . a Melt Flow Index (MFI) . . . of 0.1 g/10 min to 1g/10 min. . .” as recited in amended claim 48. Rather, Guerdoux expressly limits its disclosed copolymer A to a fluidity index between 1.5 and 5 dg/min, which appears to be outside the scope of the pending claims. See *id.* at page 1, lines 40-42.

For at least the foregoing reasons, Guerdoux does not disclose each and every element of independent claim 48, or any of the claims dependent (directly or indirectly) thereon. Applicant therefore submits that the 35 U.S.C. § 102(b) rejection of claims 48-58, 61-74, 78, and 79 is improper, and should be withdrawn.

D. The 35 U.S.C. § 103(a) rejection of claims 59, 60, and 75-77 as being unpatentable over Guerdoux is improper

The Office alleges that claims 59, 60, and 75-77 are unpatentable over Guerdoux for the reasons specified on page 6 of the Office Action. In response, Applicant respectfully disagrees with and traverses this rejection for the same reasons set forth above in section II(C). That is, while Guerdoux may or may not disclose the additional

elements of dependent claims 59, 60, and 75-77, it does not teach or suggest "[a] cable comprising at least one core . . . at least one coating layer made from a coating material, comprising: at least a first polyethylene having . . . a Melt Flow Index (MFI) . . . of 0.1 g/10 min to 1g/10 min. . . ," as recited in amended claim 48. Rather, Guerdoux teaches compositions comprising a copolymer A having a fluidity index outside the scope of the pending claims.

Thus, the Burden is on the Office to provide a tenable rationale explaining *why* one of ordinary skill would modify Guerdoux in an attempt to arrive at the claimed invention. See *KSR Int'l Co. v. Teleflex Inc.*, 82 U.S.P.Q.2d 1385 (2007); M.P.E.P. § 2142. In the present case, however, the Office has not provided any such rationale. Moreover, Applicant is not aware of a tenable rationale explaining *why* one of ordinary skill would modify Guerdoux in an attempt to arrive at the claimed invention, particularly when Guerdoux specifically teaches that its copolymer A has a fluidity index outside the scope of the pending claims.

For at least the foregoing reasons, Applicant submits that the 35 U.S.C. § 103(a) rejection of claims 59, 60, and 75-77 in view of Guerdoux is improper, and should be withdrawn.

III. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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By: 

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